

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: North Dakota

LIENS AND ADJUSTMENTS OR RECOVERIES

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1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

Not applicable. North Dakota does not use TEFRA liens.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

Not applicable because North Dakota does not use TEFRA liens.

3. The State defines the terms below as follows:

o estate North Dakota defines the estate as those assets which are, under state law, that part of the decedent's probate estate or that part of the decedent's surviving spouse's probate estate which is subject to the claims of creditors.

o individual's home

o equity interest in the home

o residing in the home for at least one or two years on a continuous basis, and

o lawfully residing.

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4. The State defines undue hardship as follows:

State law provides that a surviving spouse and, in specified circumstances children of the decedent, may claim a specified value of property, a family allowance (for living expenses), and a homestead as exempt from the claims of any creditor. North Dakota defines an undue hardship to exist when a proper person claims an exemption. (North Dakota does apply federally specified recovery limitations.)

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

The probate court determines the entitlement of persons claiming undue hardship and whether other heirs have rights superior to our Medicaid claim. Notice to heirs is accomplished by presenting a claim; the court-appointed personal representative is responsible to notice heirs. North Dakota will compromise and settle claims or defer payment on claims in instances in which such action will better serve the taxpayers.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

North Dakota does not initiate recovery in instances in which the estimated costs of recovery together with the estimated total of other claims with preference over the Medicaid claim exceeds or nearly exceeds the assets in the decedent's estate.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

North Dakota pursues recovery both formally and informally. Notice to heirs (whether for undue hardship or simply because we have presented a claim) is accomplished by the presenting of a claim. The probate court determines the entitlement of persons claiming undue hardship and whether others have rights superior to our Medicaid claim(s). The court-appointed personal representative is responsible to notice heirs. The time for filing claims, the order of payment of claims, and appeal to the court are established in state law.

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1. Estate recoveries are conducted by North Dakota's AFDC Division.
2. North Dakota defines the estate as those assets which are, under state law, that part of the decedent's probate estate or that part of the decedent's surviving spouse's probate estate which is subject to the claims of creditors. State law determines the priority of claims.
3. North Dakota pursues estate recovery for all Medicaid expenditures made for persons over the age of 65 and, beginning October 1, 1993, for all Medicaid expenditures made for persons between the ages of 55 and 65. There is no distinction made between the services or items provided to the recipient. Federally specified recovery limitations are applied. North Dakota does not use TEFRA liens.
4. State law requires that the Department of Human Services be furnished a copy of an application or petition for appointment of a personal representative in every estate, and thus the estate has a responsibility to inform the Department of any probate action. County social service board personnel monitor cases closed because a recipient has died, and follow up to determine whether recovery action is appropriate or necessary. Formal claims are presented directly to the court by the Department.
5. North Dakota pursues recovery both formally and informally. Notice to heirs (whether for undue hardship or simply because we have presented a claim) is accomplished in North Dakota by the presenting of a claim. The probate court determines the entitlement of persons claiming undue hardship and whether other heirs have rights superior to our Medicaid claim(s). The court-appointed personal representative is responsible to notice heirs.

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6. State law provides that a surviving spouse and, in specified circumstances children of the decedent, may claim a specified value of property, a family allowance (for living expenses), and a homestead as exempt from the claims of any creditor. North Dakota defines an undue hardship to exist when a proper person claims an exemption. North Dakota does not require recovery from assets decreed to the surviving spouse during the spouse's lifetime or from assets decreed to minor or dependent disabled children. North Dakota waives recovery, on the basis of undue hardship, to the extent children of the decedent are eligible for and assert a claim under the exemption criteria. North Dakota will compromise and settle claims or defer payment on claims in instances in which such action will better serve the taxpayers. North Dakota does not initiate recovery in instances in which the estimated costs of recovery together with the estimated total of other claims with preference over the Medicaid claim exceeds or nearly exceeds the assets in the decedent's estate.
7. Time for filing claims, the order of payment of claims, and appeal to the court are established in state law. Persons applying for Medicaid are informed, at the time of application, that we have a claim against their estate or their surviving spouse's estate for Medicaid issued after they reach age 55. This information is included in the Medicaid Program brochure. The Medicaid Program brochure is made available to all individuals applying for both Medicaid and for AFDC and is provided in all outreach activities.

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